

## REMARKS

### I. The Restriction Requirement and Applicant's Election

In response to the restriction requirement, Applicants hereby affirm the telephonic election of Group I (i.e., Claims 1-10). As a result, claims 11-22 stand withdrawn from further consideration, as indicated in the Listing of the Claims as set forth above.

The restriction requirement separates as distinct inventions Applicant's claimed packaging bag (i.e., claims 1-10), Applicant's claimed apparatus for manufacturing the packaging bag (i.e., claims 11-15), Applicant's claimed method of making a plurality of the packaging bags (i.e., claims 16-20), and Applicant's claimed process for packaging which utilizes the packaging bags (i.e., Claims 21 and 22). Applicant points out that the restriction requirement states that the inventions of Groups I, II, III, and IV are *distinct* from one another. MPEP 802.01 states:

#### DISTINCT

The term "distinct" means that two or more subjects as disclosed are related, for example, as combination and part (subcombination) thereof, process and apparatus for its practice, process, and product made, etc., but are capable of separate manufacture, use, or sale as claimed, AND ARE PATENTABLE (novel and nonobvious) OVER EACH OTHER (though they may each be unpatentable because of the prior art). [Emphasis NOT added.]

Applicant respectfully contends that the above portion of the MPEP indicates that in issuing the restriction requirement, the PTO has gone on record as admitting that even if the prior art were to disclose the subject matter within the claims of Group I, the claims of Group II would remain patentable thereover, and vice versa. If such an admission is not considered by the PTO to be desired in the instant application, Applicant suggests that the restriction requirement be withdrawn.

In view of the position taken by the Patent Office that the subject matter of Group I is patentable over the subject matter of Groups, II, III, and IV, and vice versa, and that the same is true of Group II with respect to Groups I, III, and IV, Applicants acquiesce to the restriction requirement without traverse, but instead direct attention to the above-described effect of the restriction requirement.

## II. The Pending Claims and the Amendments to the Claims and Specification

With the entry of the above amendments and Applicant's election, the pending claims are Claims 1-22, with Claims 11-22 having been withdrawn from consideration. The only substantive amendment to the claims is the amendment of Claim 1 by the addition of the language "...so that there is essentially a zero space between the first edge of the first ply and the second edge of the second ply." Support for this amendment can be found in the specification at Page 4 lines 22-29. Claims 11-22 stand withdrawn from consideration.

Turning to the specification, Applicant notes that various headings have been added to the specification, indicating the Background, Brief Description of the Drawings, and Detailed Description of the Invention, per the Examiner's suggestion.

No new matter is included in the amendments.

## II. Applicant's Response to the Double Patenting Rejection of Claims 1-10

Section 14 of the 8 December office action states that Claims 1-10 are rejected on the nonstatutory ground of obviousness-type double patenting over claims 1 and 5 of USPN 6,620,705 (sic, USPN 6,260,705) in view of Membrino (USPN 3,779,449). The office action states that the

'705 patent discloses Applicant's invention except for the mouth having the projecting portion and the folded over film portion for the mouth of the bag, and that in view of Membrino it would have been obvious to provide the bag with this feature.

In response, Applicant contends that Claims 1-10 are not obvious over '705 in view of Membrino. Claim 1, as amended above, recites:

...wherein the margin of the folded over portion of the second ply is disposed adjacent to the edge of the first ply so that there is essentially a zero space between the first edge of the first ply and the second edge of the second ply, so as to provide a substantially constant thickness of the bag across the mouth and projecting portion.

Thus, the "disposed adjacent" language is to the effect that there is "zero space" between these edges. See Page 4 lines 22-27 of Applicant's specification. Neither the '705 patent nor Membrino teach or suggest this feature. See FIG.s 4, 5, and 6 of Membrino, which clearly illustrate a gap between these edges, and a set of perforation through the second ply in the gap between these edges. Applicant contends that this gap in the embodiments of Membrino is there for the purpose of providing a space for conveniently perforating the second ply. As such, it is clear that '705 in view of Membrino does not rise to a prima facie case of obviousness, as neither '705 patent nor Membrino teaches or suggests the recited feature of the margin of the folded over portion of the second ply disposed adjacent to the edge of the first ply so that there is essentially a zero space between the first edge of the first ply and the second edge of the second ply, so as to provide a substantially constant thickness of the bag across the mouth and projecting portion.

### III. The §102 and §103 Rejections of Applicant's Claims over the '705 Patent and Membrino

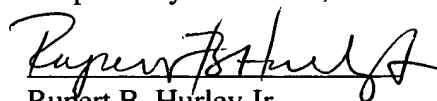
Sections 16, 18, and 19 of the 8 December office action assert various prior art rejections against Applicant's claims. Section 16 states that Membrino anticipates Claims 1, 7, and 10. Section 18 states that Claims 1-10 are obvious over the '705 patent in view of Membrino. Section 19 states that Claims 2-6 are obvious over Membrino.

In response, Applicant contend that neither the '705 patent nor Membrino teaches or suggests the recited feature of the margin of the folded over portion of the second ply disposed adjacent to the edge of the first ply so that there is essentially a zero space between the first edge of the first ply and the second edge of the second ply, so as to provide a substantially constant thickness of the bag across the mouth and projecting portion. Thus, Membrino does not anticipate Claims 1, 7, and 10. Moreover, for at least this same reason, the office action does not set forth a prima facie case of obviousness of any one or more of Claims 1-10 over the '705 patent in view of Membrino. Finally, for at least this same reason, the office action does not set forth a prima facie case of obviousness of any one or more of Claims 2-6 over Membrino.

### Conclusion

Applicants respectfully request entry of the election and the amendments, and consideration of the patentability of the claims as amended, with a view towards allowance.

Respectfully Submitted,



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